



CITY OF HAYWARD

AGENDA REPORT

AGENDA DATE 03/23/04

AGENDA ITEM 5

WORK SESSION ITEM

TO: Mayor and City Council

FROM: City Attorney

SUBJECT: Amendments to the Mobilehome Space Rent Stabilization Ordinance

RECOMMENDATION:

It is recommended that the City Council introduce this Ordinance amending the Mobilehome Space Rent Stabilization Ordinance.

BACKGROUND

MEET AND CONFER AMENDMENT

Throughout 2003, staff met with members of the Hayward Mobilehome Owners Association Amendments Committee regarding amendments to the City's Mobilehome Space Rent Stabilization Ordinance. The Committee has requested a mandatory meet and confer provision be added to the Ordinance. The mandatory meet and confer session(s) would be scheduled after the filing of a Petition for Rent Review and prior to a formal hearing on the proposed space rent increase. The purpose of the session(s) is to allow the residents to review support documentation for the rent increase informally and attempt to resolve the space rent increase dispute without the need for attorneys and expert testimony. While attorneys would not be precluded from attending the session, the session(s) is structured so that the parties negotiate directly with each other. The Rent Review officer would serve as the neutral facilitator. However, the City would have the option of hiring a professional facilitator in the event the Rent Review Officer is unable to serve as the facilitator. This meet and confer process could save the residents, the Parkowner, and the City time and money by avoiding the need to participate in a formal hearing before a hearing officer where attorneys, accountants, economists, and other experts are needed to validate the rent increase.

The Residents propose Section 5(c)(1) which presently reads:

Alternate Dispute Resolution Petition Procedures. An ADR Petition may be filed by any Tenant with the Rent Review Office to request mediation of the Tenant's dispute and, if mediation were not successful, to request binding arbitration of the Tenant's dispute with the Park Owner. The Rent Review Office shall serve the Park Owner with a copy of the ADR Petition within ten days and the Park Owner shall file a response to such Petition within thirty days by rejecting or agreeing to enter into a formal mediation process which would be followed by a binding arbitration hearing if the

mediation did not resolve the dispute.

be amended to the following language:

Mandatory Meet And Confer Session. Upon receipt of a Petition for Rent Review, the Rent Review Officer shall schedule a mandatory meet and confer session with the Park Owner, representative(s) of the Tenant(s), and the Rent Review Officer or a professional facilitator. The purpose of the meet and confer session(s) will be to have the parties review the notice of rent review and any evidence supporting the proposed rent increase. The parties shall participate in good faith and attempt to resolve the dispute informally.

Additionally, two other sections of the Ordinance would need to be changed. Section 5(c)(2) which allowed a Parkowner to go directly to an arbitration rather than participate in a mediation would need to be removed in its entirety and Section 5(c)(3) would need to be renumbered to 5(c)(2).

SELECTION OF HEARING OFFICER AMENDMENT

Staff recommends amending Section 5(d) in order to comply with new case law relating to the selection of hearing officers and possible bias arising from the expectation of repeat assignments to the hearing officer who renders decisions which are favorable to a City's position in a particular hearing. In the current selection process, the City obtains the name of one hearing officer from one company and that person becomes the hearing officer. The proposed selection process would involve the creation of a list of qualified hearing officers from two or three companies who provide hearing officers, mediators, and arbitrators. The City would select five names of potential hearing officers from the list and present the names and resumes to the parties. The Parkowner and Tenants would eliminate names from the list. The last named person becomes the hearing officer. The proposed amendment does not affect the City's obligation to defend decisions rendered by the hearing officer and challenged by either party in the courts.

Staff requests Section 5(d), which presently reads:

Assignment of Hearing Officer and Hearing Date. Upon receipt of the petition, the Rent Review Officer shall, within three working days, assign a Hearing Officer to serve as a Mediator or an Arbitrator. The Rent Review Officer shall set a date for the arbitration hearing no sooner than 10 or later than 21 days after the Arbitrator is assigned. The Park Owner and Tenants shall be notified immediately in writing by the Rent Review Officer of the date, time, and place of the hearing and this notice shall be served either in person or by ordinary mail.

be amended to the following language:

Assignment of Hearing Officer and Hearing Date. Upon completion of the mandatory meet and confer session(s), the Rent Review Officer shall, within five working days provide to the parties a list of at least five hearing officers selected from a list of qualified individuals

provided to the City by organizations who provide hearing officers, mediators, or arbitrators for administrative hearings. Within ten days of the receipt of the names of the possible hearing officers, the Rent Review Office shall convene the parties for the purpose of selecting the hearing officer. Each party, commencing with the Tenants first and then the Park Owner, shall strike one name from the list until only one name remains. The remaining name shall become the Hearing Officer for the hearing. The Rent Review Officer shall set a date for the arbitration hearing at the earliest possible date based on the availability of the selected Hearing Officer. The Park Owner and Tenants shall be notified immediately in writing by the Rent Review Officer of the date, time, and place of the hearing, and this notice shall be served either in person or by ordinary mail.

JUDICIAL REVIEW

In order to harmonize with state law regarding the deadlines for seeking judicial review of a hearing officer's decision and to clarify the acceptable method for serving a petition for judicial review on the Tenants, staff requests Section 5(e)(4) which presently reads:

Judicial Review of Arbitration Decision. A Park Owner or Tenant who wishes to contest an arbitration decision shall file and complete service of a petition for judicial review of the arbitration decision no later than 90 days after the mailing of the arbitration decision. The petition shall be served on the City Clerk and each party to the arbitration including all affected Tenants. Exhaustion of administrative remedies and compliance with the deadlines set forth in this subsection shall be jurisdictional.

be amended to the following language:

Judicial Review of Arbitration Decision. A Park Owner or Tenant who wishes to contest an arbitration decision shall file and complete service of a petition for judicial review of the arbitration decision in accordance with the filing deadlines set forth in Code of Civil Procedure 1094.6. The petition shall be served on the City Clerk, and the City Clerk shall mail by first class mail, return receipt requested, a copy of the petition to the Tenant representative designated in the Petition for Rent Review within ten days of the date of service of the petition for judicial review. Exhaustion of administrative remedies and compliance with the deadlines set forth in this subsection shall be jurisdictional.

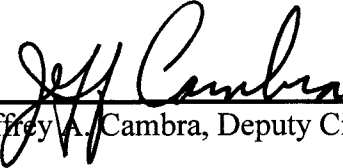
CONCLUSION

By adopting the amendments, the Council would reaffirm its commitment to providing affordable housing options to all residents of Hayward and recognize the Mobilehome Space Rent Stabilization Ordinance as a means of protecting the City's mobilehome affordable housing stock.

The amendments will improve the effectiveness of the Ordinance and its ability to protect the mobilehome affordable housing stock. The Council directs staff to review the operation of the entire Ordinance and report the findings to the Council on an annual basis.

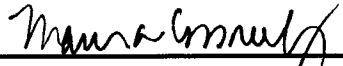
For all the reasons stated above, staff recommends the City Council adopt the amendments to the Mobilehome Space Rent Stabilization Ordinance.

Prepared by:



Jeffrey A. Cambra, Deputy City Attorney

Recommended by:



Michael O'Toole, City Attorney

Approved by:



Jesús Armas, City Manager

DRAFT

ORDINANCE NO. ____

AN ORDINANCE AMENDING ORDINANCE NO. 89-057 C.S., AS
AMENDED, THE MOBILEHOME SPACE RENT STABILIZATION
ORDINANCE

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Subdivision 5(c)(1) of Ordinance No. 89-057 C.S., as amended, is further amended as follows:

“(1) Mandatory Meet And Confer Session. Upon receipt of a Petition for Rent Review, the Rent Review Officer shall schedule a mandatory meet and confer session with the Park Owner, representative(s) of the Tenant(s), and the Rent Review Officer or a professional facilitator. The purpose of the meet and confer session(s) will be to have the parties review the notice of rent review and any evidence supporting the proposed rent increase. The parties shall participate in good faith and attempt to resolve the dispute informally.”

Section 2. Subdivision 5(d) of Ordinance No. 89-057 C.S., as amended, is further amended as follows:

“(d) Assignment of Hearing Officer and Hearing Date. Upon completion of the mandatory meet and confer session(s), the Rent Review Officer shall, within five working days provide to the parties a list of at least five hearing officers selected from a list of qualified individuals provided to the City by organizations who provide hearing officers, mediators, or arbitrators for administrative hearings. Within ten days of the receipt of the names of the possible hearing officers, the Rent Review Office shall convene the parties for the purpose of selecting the hearing officer. Each party, commencing with the Tenants first and then the Park Owner, shall strike one name from the list until only one name remains. The remaining name shall become the Hearing Officer for the hearing. The Rent Review Officer shall set a date for the arbitration hearing at the earliest possible date based on the availability of the selected Hearing Officer. The Park Owner and Tenants shall be notified immediately in writing by the Rent Review Officer of the date, time, and place of the hearing, and this notice shall be served either in person or by ordinary mail.”

Section 3. Subdivision 5(e)(4) of Ordinance No. 89-057 C.S., as amended, is further amended as follows:

“(4) Judicial Review of Arbitration Decision. A Park Owner or Tenant who wishes to contest an arbitration decision shall file and complete service of a petition for judicial review of the arbitration decision in accordance with the filing deadlines set forth in Code of Civil Procedure 1094.6. The petition shall be served on the City Clerk, and the City Clerk shall mail by first class mail, return receipt requested, a copy of the petition to the Tenant representative designated in the Petition for Rent Review within ten days of the date of service of the petition for judicial review. Exhaustion of administrative remedies and compliance with the deadlines set forth in this subsection shall be jurisdictional.”

Section 4. Subdivision 5(c)(2) of Ordinance No. 89-057 C.S., as amended, is deleted and Subdivision 5(c)(3) is hereby renumbered 5(c)(2).

Section 5. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 6. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ____ day of _____, 2004, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the ____ day of _____, 2004, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward